

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JEFFREY P. POMERANTZ,

Defendant.

Case No. 2:16-cv-689-JLR

**AFFIDAVIT OF PAUL T. BUTLER
IN SUPPORT OF MOTION FOR
ALTERNATIVE METHODS OF
SERVICE UPON DEFENDANT
JEFFREY POMERANTZ**

I, Paul T. Butler, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am presently employed as a Trial Attorney at the Department of Justice, Tax Division. My post of duty is in Washington DC.

2. I am the assigned trial attorney in this case.

3. Defendant is a United States citizen who resides and conducts his business in British Columbia, Canada. Exhibit A, pp. 3-5.

ATTEMPTS TO SERVE DEFENDANT

4. The United States Internal Revenue Service ("IRS") maintains a database of the most recent address changes reported on filings made by taxpayers to the IRS which are produced in reports by social security number for domestic addresses ("FINDSD") and international addresses ("FINDSI") with an indication of the year, week and day such address was reported to the IRS. Defendant's most recent filings with the IRS list Defendant's address as 189-1075 Marine Drive, North Vancouver, B.C., Canada V7P 3T6 ("1075 Marine Drive"). See Exhibit B.

5. On a Petition filed by Defendant in the United States Tax Court at Docket No. 25058-15, which involves taxes and penalties for the same years involved in the instant case,

1 Defendant's address is listed as 364-38109 Second Avenue, Squamish, B.C. Canada V8B 0T7
2 ("Second Avenue"). See Exhibit A, p. 2.

3 6. The most recently listed domestic address on Defendant's filings with the IRS
4 listed his address as 250 H Street, Apt. 77, Blaine, WA 98230. This address was last used on a
5 filing Defendant made with the IRS in 2010 ("H Street"). See Exhibit C. However, the IRS
6 obtained information from the owner of the business at that address (Security Mail Services) that
7 the address was a mail services store and that Defendant was using the address from at least June
8 of 2009 and was still using the mailbox at that location as of April of 2016. See Exhibit D.
9 Additionally, this mailbox location has been used by a business called Tofino Software, which is
10 associated with the Defendant. See Exhibit E.

11 7. On May 19, 2016, counsel for the United States sent via Federal Express delivery
12 service Notice of Lawsuit and Request to Waive Service of Summons, a copy of the Complaint,
13 and a self-addressed pre-paid Federal Express return envelope ("waiver package") to the
14 Defendant addressed to each of the three addresses identified above in ¶¶ 4-6. See Exhibits F, G,
15 H.

16 8. At 11:16 a.m. on May 20, 2016, the waiver package addressed to Defendant at the
17 H Street address was delivered. See Exhibit I.

18 9. On May 26, 2016, Federal Express called me and informed me that the Second
19 Avenue address was a UPS store and that Defendant no longer maintained a mailbox at that
20 store.

21 10. During the same telephone call, I provided the Federal Express personnel with the
22 telephone number that Defendant had provided on the Petition that Defendant had filed in the
23 United States Tax Court as a contact number for Defendant. See Exhibit A, p.2.

1 11. At 2:27 p.m. on May 26, 2017, the waiver package addressed to the Second
2 Avenue address was delivered. See Exhibit J.

3 12. On June 8, 2017, I called Federal Express and requested the address to which the
4 Second Avenue waiver package was actually delivered and was advised by Federal Express
5 personnel that after contact with the Defendant the package had been delivered to 207-1425
6 Marine Drive, North Vancouver, BC, Canada V7T 1B7 ("1425 Marine Drive"), a location that is
7 also a mail service store location. See Exhibit K.

8 13. On May 26, 2016, Federal Express left a message on my voicemail indicating that
9 the waiver package addressed to the 1075 Marine Drive address could not be delivered because
10 the address was for a UPS store that had closed at that location and left no forwarding
11 information.

12 14. On June 8, 2016, the waiver package addressed to the 1075 Marine Drive address
13 was returned to me by Federal Express. See Exhibit L.

14 15. On August 2, 2016, I called the telephone number (604-926-2466) that was listed
15 for Defendant on the Petition that he had filed with the United States Tax Court. The person
16 answered the phone at that number by saying "Tofino Software" (a company associated with
17 both Defendant and the H Street address - See Exhibit D, box #9 and Exhibit K). I identified
18 myself and asked if I was speaking with Mr. Jeffrey Pomerantz. The person who answered the
19 phone replied that it was. I advised that I had sent him correspondence regarding this suit which
20 had been filed against him in Western District of Washington asking him to waive service of
21 process. He confirmed to me that he had received the correspondence. In response to my
22 question about Defendant intended to waive service, he responded by stating that had no ability
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1 to pursue this action, would not waive service, and he would not accept service of process by e-
2 mail. Defendant was evasive when I asked where he was living.

3 16. Counsel who still represents the Defendant in the action pending in the United
4 States Tax Court, Hari Nesathurai ("Mr. Nesathurai"), (See Exhibit M – Complete Docket Sheet
5 printed March 3, 2017) also represented the Defendant during the administrative process that
6 preceded the assessment of the FBAR penalties at issue in the instant case and filed a Form 2848
7 Power of Attorney with the Internal Revenue Service in order to represent the Defendant before
8 the Service with respect to tax, FBAR, and foreign partnership/foreign corporation issues which
9 has not been withdrawn. See Exhibit N.

10 17. Between August 3, 2016 and January 27, 2017, I called Mr. Nesathurai on at least
11 six occasions and left messages on voicemail and/or with receptionists asking Mr. Nesathurai to
12 return my call regarding Jeffrey Pomerantz. I left either my phone number or e-mail address or
13 both in each message. To date, Mr. Nesathurai has not responded to any of the messages.

14 18. Despite at least six extensive internet searches that I have conducted and as well
15 as three that have been conducted by research librarians for current actual residential addresses
16 for the Defendant, I have been unable to identify a current residential address for Jeffrey
17 Pomerantz.

18 I declare under penalty of perjury that the foregoing is true and correct.

19 Dated: March 3, 2017.

20 /s/ Paul T. Butler
21 PAUL T. BUTLER
22 Trial Attorney, Tax Division
23 U.S. Department of Justice
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